

§ 1101.16 Criminal penalties.

(a) Under the provisions of the Act, it is a Federal crime for any person to knowingly and willfully request or obtain information from a Federal agency, including this Section, by false pretenses.

(b) It is also a crime for any officer or employee of the Section to knowingly and willfully:

(1) Make an unauthorized disclosure; or

(2) Fail to publish public notice of a system of records as required by 5 U.S.C. 552a(e)(4).

§ 1101.17 Annual report to Congress.

(a) On or before August 1 of each calendar year the Commissioner shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include:

(1) The U.S. Section's point of contact responsible for implementing the Privacy Act of 1974;

(2) The number of active systems, new systems published, systems deleted, systems automated, either in whole or part, number of existing systems for which new routine uses were established, number of existing systems for which new exemptions were claimed, number of existing systems from which exemptions were deleted, and number of public comments received by the agency of publication of rules or notices;

(3) Total number of requests for access, number of requests wholly or partially granted, number of requests totally denied, number of requests for which no record was found, number of appeals of denials of access, number of appeals in which denial was upheld, number of appeals in which denial was overturned either in whole or part, number of requests to amend records in system, number of amendment requests wholly or partially granted, number of amendment requests totally denied, number of appeals of denials of amendment requests, number of appeals in which denial was upheld, number in which denial was overturned either in whole or in part, whether the U.S. Section denied an individual ac-

cess to his or her records in a system of record on any basis other than a Privacy Act exemption under 5 U.S.C. 552(j) or (k), and the legal justification for the denial, number of instances in which individuals litigated the results of appeals of access or amendment, and the results of such litigation, and a statement of our involvement in matching programs;

(4) Any other information which will indicate the U.S. Section's effort to comply with the objectives of the Act, to include any problems encountered, with recommendations for solving thereof;

(5) And, a copy of these regulations.

PART 1102—FREEDOM OF INFORMATION ACT

Sec.

1102.1 Purpose.

1102.2 Definitions.

1102.3 Procedures for requesting access to records or information.

1102.4 Fees.

1102.5 Categories of requesters for fee purposes.

1102.6 Fee waivers and appeals.

1102.7 The Section's determination and appeal procedures.

1102.8 Exemptions.

1102.9 Annual report to Congress.

1102.10 Examination of records.

AUTHORITY: 5 U.S.C. 552 (Pub. L. 90-23, as amended by Pub. L. 93-502 and 99-570).

SOURCE: 55 FR 35898, Sept. 4, 1990, unless otherwise noted.

§ 1102.1 Purpose.

The purpose of this part is to prescribe rules, guidelines and procedures to implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended on November 21, 1974, by Public Law 93-502, and on October 27, 1986, by Public Law 99-570.

§ 1102.2 Definitions.

Act means the Freedom of Information Act, 5 U.S.C. 552, as amended.

Commercial-use request refers to a request from or on behalf of one who seeks information for a cause or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester properly belongs in this

category, the Section will consider how the requester will use the documents.

Commissioner means head of the United States Section, International Boundary and Water Commission, United States and Mexico.

Direct costs means those expenditures which the Section actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility where the records are stored.

Disclose or disclosure means making records available, on request for examination and copying, or furnishing a copy of records.

Duplication refers to the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper, microform, audiovisual materials, or machine-readable documentation. The Section will provide a copy of the material in a form that is usable by the requester unless it is administratively burdensome to do so.

Educational institution refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

Noncommercial scientific institution refers to an institution that is not operated on a "commercial" basis as that term is referenced above, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

Person or Requester includes any individual, firm, corporation, organization or other entity.

Records and/or information are defined as all books, papers, manuals, maps, photographs, or other documentary

materials, regardless of physical form or characteristics, made or received by the Section under Federal law or in connection with the transaction of public business or in carrying out its treaty responsibilities and obligations, and preserved or appropriate for preservation by the Section as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the information value of the data in them, but does not include books, magazines or other material acquired solely for library purposes and through other sources, and does not include analyses, computations, or compilations of information not extant at the time of the request. The term "records" does not include objects or articles such as structures, furniture, paintings, sculptures, three-dimensional models, vehicles, and equipment.

Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though not actually employed by it.

Request means a letter or other written communication seeking records or information under the Freedom of Information Act.

Review refers to the process of examining documents located in response to a request that is for commercial use to determine if any portion of that document is permitted to be withheld, and processing any document for disclosure (i.e., doing all that is necessary to excise them and otherwise prepare them for release). It does not include time spent resolving general legal or policy

issues regarding the application of exemptions.

Search includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches should be performed in the most efficient and least expensive manner so as to minimize costs for both the Section and the requester; for example, line-by-line searches should not be undertaken when it would be more efficient to duplicate the entire document. Note that such activity should be distinguished from "review" of material in determining whether the material is exempt from disclosure. Searches may be done manually or by computer using existing programming.

The *Section* means United States Section, International Boundary and Water Commission, United States and Mexico.

All terms used in this part which are defined in 5 U.S.C. 552 shall have the same meaning herein.

§ 1102.3 Procedures for requesting access to records or information.

(a) A request for any information or records shall be addressed to the FOIA Officer, United States Section, International Boundary and Water Commission, 4171 North Mesa, suite C-310, El Paso, TX 79902-1422. The envelope and the letter shall be clearly marked "Freedom of Information Request" or "Request for Records," or the equivalent, to distinguish it from other mail to the Section. If the request is not so marked and addressed, the 10-day time limit described in the Act will not begin to run until the request has been received by the FOIA Officer in the normal course of business. In each instance where a request is received in the normal course of business, the FOIA Officer shall notify the requester that its request was improperly addressed and the date the request was received.

(b) In order for the Section to locate records or information and make them available, it is necessary that it be able to identify the specific record or information sought. Persons wishing to inspect or obtain copies of records or information should, therefore, seek to

identify them as fully and accurately as possible. In cases where requests are submitted which are not sufficient to permit identification, the FOIA Officer will endeavor to assist the persons seeking the records or information in filling in necessary details. In most cases, however, persons seeking records or information will find that time taken in trying to identify materials in the beginning is well worth their while in enabling the Section to respond promptly to their request.

(c) A person submitting a request should—

(1) Indicate the specific event or action, if any or if known, to which the request has reference.

(2) Designate the Division, Branch, or Project Office of the Section which may be responsible for or may have produced the record or information requested.

(3) Furnish the date of the record or information or the date or period to which it refers or relates, if known.

(4) Name the character of record or information, such as a contract, an application, or a report.

(5) List the Section's personnel who may have prepared or have knowledge of the record or information.

(6) Furnish the reference material such as newspapers or publications which are known to have made a reference to the record or information desired.

(7) If the request relates to a matter in pending litigation or one which has been litigated, supply the Court location and case style and number.

(8) Describe, when the request includes more than one record or source of information, specifically each record or information so that availability may be separately determined.

(9) Clearly indicate whether the request is an initial request or an appeal from a denial of a record or information previously requested.

(10) Identify, when the request concerns a matter about the Section's personnel, the person as follows: First name, middle name or initial, and surname; date and place of birth; and social security account number, if known.

(d) No particular format is needed for the request, except that it:

§ 1102.4

22 CFR Ch. XI (4-1-02 Edition)

- (1) Must be in writing;
- (2) Must describe the records or information sought with sufficient detail to permit identification;
- (3) Should state a limitation of the fees the requester is willing to pay, if any; and
- (4) Must include the name, address, and telephone number (optional) of the person submitting the request.

§ 1102.4 Fees.

(a) The following shall be applicable with respect to services rendered to members of the public under this subpart:

- (1) Fee schedule.
- (i) Searching for records, per hour or fraction thereof per individual:

Professional	\$18.00
Clerical	\$9.00

Includes the salary of the category of employee who actually performs the search, plus an additional 16% of that rate to cover benefits.

(ii) The cost for computer searches will be calculated based on the salary of the category of employee who actually performs the computer search, plus 16% of that rate to cover benefits, plus the direct costs of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

- (iii) Reproduction fees:

Pages no larger than 8½ by 14 inches when reproduced by routine electrostatic copying: \$0.10 per page.

Pages requiring reduction, enlargement, or other special services will be billed at direct cost to the Section.

Reproduction by other than routine electrostatic copying will be billed at direct cost to the Section.

(iv) Certification of each record as a true copy—\$1.00

(v) Certification of each record as a true copy under official seal—\$1.50

(vi) For each signed statement of negative result of search for record—\$1.00

(vii) For each signed statement of nonavailability of record—\$1.00

(viii) Duplication of architectural photographs and drawings:

Available tracing or reproducible, per square foot	\$0.10
If intermediate negative and reproduc-	

ible required	\$2.00;
Plus tracing per square foot	\$1.00

(ix) *Postage and handling.* It will be up to the person requesting the records or information to designate how the material will be mailed or shipped. In the absence of such instructions no records or information will be sent to a foreign address, and records and information will be sent to domestic addresses utilizing first class certified mail, return receipt requested and will be billed at direct cost to the Section.

(2) Only requesters who are seeking documents for commercial use will be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. The cost for review will be calculated based on the salary of the category of the employee who actually performed the review plus 16% of the rate to cover benefits. Charges will be assessed only for the initial review (i.e., review undertaken the first time in order to analyze the applicability of specific exemption(s) to a particular record or portion of record) and not review at the administrative appeal level of the exemption(s) already applied.

(3) If records requested under this part are stored elsewhere than the headquarters of the U.S. Section, IBWC, 4171 North Mesa, EL Paso, TX, the special cost of returning such records to the headquarters shall be include in the search costs. These costs will be computed at the actual costs of transportation of either a person or the requested record between the place where the record is stored and the Section headquarters when, for time or other reasons, it is not feasible to rely on Government mail service.

(4) When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or size or type thereof, the FOIA Officer is authorized to establish an appropriate fee, pursuant to the criteria established in Office of Management and Budget Circular No. A-25, entitled "User Charges."

(b) Where it is anticipated that the fees chargeable under this part will amount to more than \$25 and the requester has not indicated in advance her/his willingness to pay fees as high

as anticipated, the requester shall be promptly notified of the amount of the anticipated fees or such portion thereof as can readily be estimated. The notice or request for an advance deposit shall extend an offer to the requester to confer with knowledgeable Section personnel in an attempt to reformulate the request in a manner which will reduce the fees and meet the needs of the requester. Dispatch of such notice or request shall suspend the running of the period for response by the Section until a reply is received from the requester.

(c) Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the Section determines that a record which has been requested, but which is exempt from disclosure under this part, is to be withheld.

(d) The Section will begin assessing interest charges on an unpaid bill starting the 31st day following the day on which the billing was sent. The accrual of interest will be stayed upon receipt of the fee, rather than upon its processing by the Section. Interest will at the rate prescribed in section 3717 of title 31 U.S.C.

(e) A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Section reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Section will aggregate any such requests and charge accordingly.

(f) The Section will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The Section estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then the Section will notify the requester of the likely costs and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full esti-

mated charges in the case of requesters with no history of payment; or

(2) Requesters who have previously failed to pay fees charged in a timely fashion (i.e., within 30 days of the date of the billing), the Section will require such requesters to pay the full amount owed plus any applicable interest as provided above or demonstrate that they have, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process new requests or pending requests from such requesters.

When the Section acts under paragraph (f) (1) or (2) of this section, the administrative time limit prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests plus permissible extensions of that time limit) will begin only after the Section has received payments described above.

(g) In accordance with the provisions and authorities of the Debt Collection Act of 1982 (Pub. L. 97-365), the Section reserves the right to disclose information to consumer reporting agencies and to use collection agencies, where appropriate, to encourage repayment.

(h) No fees under \$10 will be billed by the Section because the cost of collection would be greater than the fee.

(i) Requester should pay fees by check or money order made out to the U.S. Section, International Boundary and Water Commission, and mailed to the Finance and Accounting Office, United States Section, International Boundary and Water Commission, 4171 North Mesa, suite C-310, El Paso, TX 79902-1422.

§ 1102.5 Categories of requesters for fee purposes.

There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories. The Section will take into account information provided by requesters in determining their eligibility for inclusion in one of these categories as defined in § 1102.2. It is in the requester's best interest to provide as much information

§ 1102.6

as possible to demonstrate inclusion within a non-commercial category of fee treatment.

(a) The Section will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought for commercial use. Commercial use requesters are entitled to neither two hours of free search time nor 100 free pages of reproduction of documents.

(b) The Section will provide documents to educational and non-commercial scientific institutions for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request being made is authorized by, and under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(c) The Section will provide documents to representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category; a requester must meet the criteria in §1102.2(m), and the request must not be made for a commercial use. In reference to this class of requesters, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(d) The Section will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(e) In making determinations under this section, the Section may take into account whether requesters who previously were granted (b), (c), or (d) sta-

22 CFR Ch. XI (4-1-02 Edition)

tus under the Act did in fact use the requested records for purposes compatible with the status accorded them.

§ 1102.6 Fee waivers and appeals.

(a) Waiver or reduction of any fee provided for in §1102.4 may be made upon a determination by the FOIA Officer, United States Section, International Boundary and Water Commission, 4171 North Mesa, suite C-310, El Paso, TX 79902-1422. The Section shall furnish documents without charge or at a reduced charge provided that: Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, the Section will consider the following four factors:

(i) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Government;

(ii) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of Government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of Government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Section will consider the following two factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that

would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) The Section will not consider waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain due to the Section for another information access request.

(c)(1) The Section's decision to refuse to waive or reduce fees as requested under paragraph (a) of this section may be appealed to the Commissioner, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C-310, El Paso, TX 79902-1422. Appeals should contain as much information and documentation as possible to support the request for a waiver or reduction of fees.

(2) Appeals will be reviewed by the Commissioner, who may consult with other officials of the Section as appropriate. The requester will be notified within thirty working days from the date on which the Section received the appeal.

§ 1102.7 The Section's determination and appeal procedures.

Upon receipt of any request for records of information under the Act the following guidelines shall be followed:

(a) The FOIA Officer will determine within 10 days (excepting Saturdays, Sundays, and legal holidays) after receipt of any such request whether to comply with such request and will immediately notify the person making such request of such determination, the reasons therefore, and of the right to such person to appeal to the Commissioner any adverse determination.

(b) All appeals should be addressed to the Commissioner, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite, C-310, El Paso, TX 79902-1422, and should be clearly identified as such on the envelope and in the letter of appeal by using the marking "Freedom of

Information Appeal" or "Appeal for Records" or the equivalent. Failure to properly address an appeal may defer the date of receipt by the Section to take into account the time reasonably required to forward the appeal to the Commissioner. In each instance when an appeal is incorrectly addressed to the Commissioner, he shall notify the person making the appeal that his appeal was improperly addressed and of the date the appeal was received by the Commissioner. The Commissioner will make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal holidays) after the receipt of an appeal. If on appeal the denial or the request is in whole or in part upheld, the Commissioner will notify the person making such request of the provisions for judicial review under the Act. An appeal must be in writing and filed within 30 days from receipt of the initial determination (in cases of denials of an entire request), or from receipt of any records being made available pursuant to the initial determination (in case of partial denials). In those cases where a request or appeal is not addressed to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(c) In unusual circumstances, as set forth in paragraph (d) of this section, the time limits for responding to the original request or the appeal may be extended by not more than an additional 10 working days by written notice to the person making a request. This notice must be sent within either 10- or 20-day time limit and will specify the reason for the extension and the date on which determination is expected to be dispatched. The extension may be invoked only once during the consideration of a request either during the initial consideration period or during the consideration of an appeal, but not both.

(d) The unusual circumstances are:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the requestor among two or more components of the agency having substantial subject-matter interest therein.

(e) If the FOIA Officer receives a request which is of proper concern to an agency or entity outside the Section, it will be returned to the person making the request, advising the requester to refer it to the appropriate agency or entity if requester desires, and providing the requester with the name or title, address and other appropriate information. An information copy of the request and the letter of referral will be forwarded promptly to the agency or entity outside the Section that may expect the request. In the event the FOIA Officer receives a request to make available a record or provide information which is of interest to more than one agency (Federal, State, municipal, or legal entity created thereby), the FOIA Officer will retain and act upon the request if the Section is one of the interest agencies and if its interest in the record is paramount.

(f) The Commissioner's determination on an appeal shall be in writing and when it denies records in whole or in part, the letter to the person making a request shall include:

(1) Notation of the specific exemption or exemptions of the Act authorizing the withholding.

(2) A statement that the decision is final for the Section.

(3) Advice that judicial review of the denial is available in the district in which the person making the request resides or has his principal place of business, the district in which the Section's records are situated, or the District of Columbia.

(4) The names and titles or positions of each official responsible for the denial of a request.

When appropriate, the written determination may also state how an exemption applied in that particular

case, and, when relevant, why a discretionary rebasis is not appropriate.

(g) In those cases where it is necessary to find and examine records before the legality or appropriateness of their disclosure can be determined, and where after diligent effort this has not been achieved within the required period, the FOIA Officer may advise the person making the request that a determination to presently deny the request has been made because the records or information have not been found or examined, that the determination will be considered when the search or examination is completed and the time within which completion is expected, but that the person making the request may immediately file an administrative appeal to the Commissioner.

§ 1102.8 Exemptions.

(a) 5 U.S.C. 552(b) provides that the requirements of the FOIA do not apply to matters that are:

(1) *Classified documents*. Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and that are, in fact, properly classified under the Executive order.

(2) *Internal personnel rules and practices*. Related solely to the internal personnel rules and practices of an agency.

(3) *Information exempt under other laws*. Specifically exempted from disclosure by statute, provided that the statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) *Confidential business information*. Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) *Internal government communications*. Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

(6) *Personal privacy*. Personnel, medical, and similar files the disclosure of

which would constitute a clearly unwarranted invasion of personal privacy.

(7) *Law enforcement.* Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) *Financial institutions.* Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(9) *Geological information.* Geological and geophysical information and data, including maps, concerning wells.

(b) The Section will provide any reasonably segregable portion of a record to a requester after deletion of the portions that are exempt under this section.

(c) The section will invoke no exemption under this section if the requested records are available to the requester under the Privacy Act of 1974 and its implementing regulations.

(d) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and

(1) The investigation or proceeding involves a possible violation of criminal law, and

(2) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

§ 1102.9 Annual report to Congress.

(a) On or before March 1 of each calendar year the Commissioner shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include:

(1) The number of determinations made by the section not to comply with request for records made to the section under the Act and this part and the reasons for each such determination.

(2) The number of appeals made by persons under the Act and this part, the result of such appeals, and the reason for the action upon each appeal that results in a denial of information.

(3) The names and titles or positions of each person responsible for the denial of records requested under the Act, and the number of instances of participation for each.

(4) The results of each proceeding conducted pursuant to 552(1)(4)(F) of the Act, including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(5) A copy of this part.

(6) A copy of the fee schedule and the total amount of fees collected by the section for making records available under the Act.

(7) Such other information as indicates efforts to administer fully the Act.

(b) A copy of each such report to the Congress made pursuant to paragraph (a) of this section will be made available for public inspection and copying in the office of the FOIA Officer, United States Section, International Boundary and Water Commission, 4171 North Mesa, Suite C-310, El Paso, TX 79902-1422.

§ 1102.10 Examination of records.

When a request to examine records is approved by the FOIA Officer, every reasonable effort will be made to provide facilities for the purpose of such examination. "On the spot" copying will be available if the FOIA Officer decides there will be no interference with ordinary activities or routine business of the section.

PART 1103—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO, UNITED STATES SECTION

Sec.

- 1103.101 Purpose.
- 1103.102 Application.
- 1103.103 Definitions.
- 1103.104—1103.109 [Reserved]
- 1103.110 Self-evaluation.
- 1103.111 Notice.
- 1103.112—1103.1103 [Reserved]
- 1103.130 General prohibitions against discrimination.
- 1103.131—1103.139 [Reserved]
- 1103.140 Employment.
- 1103.141—1103.148 [Reserved]
- 1103.149 Program accessibility: Discrimination prohibited.
- 1103.150 Program accessibility: Existing facilities.
- 1103.151 Program accessibility: New construction and alterations.
- 1103.152—1103.159 [Reserved]
- 1103.160 Communications.
- 1103.161—1103.169 [Reserved]
- 1103.170 Compliance procedures.
- 1103.171—1103.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4577, Feb. 5, 1986, unless otherwise noted.

§ 1103.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1103.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1103.103 Definitions.

For purposes of this part, the term—
Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.